

IN THE MATTER OF  
THE APPLICATION OF  
GEORGE T. GUTTENBERGER, ET UX  
FOR A ZONING RECLASSIFICATION FROM  
D.R. 16 TO B.R. AND SPECIAL EXCEPTION  
AND VARIANCES ON PROPERTY LOCATED AT  
THE NORTHWEST CORNER OF OLD EASTERN  
AVENUE AND ANN AVENUE  
(1422 OLD EASTERN AVENUE)  
15th ELECTION DISTRICT  
5th COUNCILMANIC DISTRICT

#### OPINION

This case comes before this Board on Petition to reclassify a small parcel of D.R. 16 land to B.R. In conjunction with the requested B.R. zone, a special exception to permit a contractor's storage yard is sought. In addition to the reclassification request and the special exception, a number of variances are also sought. The case was heard this day in its entirety.

From the testimony and evidence received this day, the following history of this small site is relevant to the issues before the Board. Since some time prior to 1945, this property has been used commercially, principally as a repair and service garage. There was no evidence presented indicating any residential use. At some time, approximately 10 years ago, the State Highway Administration constructed the first phase of Route 702. The State acquired a portion of the subject site in order to construct the highway and erected a large barrier wall on the property line between its taking and the Petitioner's site. The terminal for 702 at this time ended at Eastern Avenue. The property owner, at this time, was given to believe by the State Highway Administration that, when the extension of 702 was erected, the State would require 10 feet from the Eastern Avenue side of Petitioner's property. At some time in the mid-1980's, the extension of 702 from Eastern Avenue to Back River Neck Road was begun, and negotiations for the taking along the Eastern Avenue side of Petitioner's site were begun. In 1988, condemnation proceedings were instituted, and instead of

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10 feet, 35 feet were taken. In addition to the taking of this extra 25 feet, Eastern Avenue was raised approximately 4 feet directly in front of Petitioner's property to provide access to 702. This effectively sealed off any possible access to Petitioner's site from Eastern Avenue. At this same time, Ann Avenue, which is the other adjoining road, was made dead-end at Eastern Avenue, and Ann Avenue was extended to gain access to Stemmers Run Road. Petitioner's property contains some 4/10 gross acreage but only 2/10 acre can actually be of any use.

Mr. George Guttenberger, property owner, purchased this property 11 years ago and has used it for the repair of his construction vehicles and the storage of construction equipment. As it presently exists, he cannot even get out of his garage a vehicle that is stored in there and sealed off by the reconfiguration of Eastern Avenue. He testified as to his reasons for the error in the D.R. 16 zoning, the reasons for requesting a B.R. zoning, answered all the requirements in 502 negatively, and discussed at length the variance requests.

Mr. Paul Lee, the Engineer, testified he prepared the plat and the environmental statement, explained the necessity for the variances, and described the nature and character of the site and answered all the requirements of 502 negatively.

Norman Gerber, Planner, testified his reasons why the D.R. 16 zoning is in error and that the proper zoning would be B.R. He specifically noted the unrealistic practicality of any residential use for this site. He testified at length as to its being bounded by two roads and completely encircled by commercial uses. He also answered all the requirements of 502 negatively.

People's Counsel presented as their witness Pat Keller, the Deputy Planning Director, who entered as their exhibit the Director's report. He

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testified that in his opinion the D.R. 16 was in error and that the site was not appropriate for residential use and recommended that the B.R. zoning be granted. He also asks that several restrictions be placed upon the special exception associated with the B.R. use. This brief resume is in no way intended to reflect the total testimony from the witnesses but will let the record speak for itself.

In view of all the testimony and evidence received, it is the opinion of this Board that the D.R. 16 zoning on the site is in error. Since this property was never an issue on any of the zoning maps, it appears to be a small site that was never an issue and was therefore never addressed. The use that has apparently always existed on the site is a use that fits into the B.R. classification, and the Petitioner is only requesting that he be allowed to use his site as it has been used for many years. The Board is therefore of the opinion that the B.R. zoning should be granted and that the special exception that conforms to all the requirements of 502 should also be granted.

The area variances that are requested are dimensions that are already in existence from the existing building to the property lines. The area variances do not in any way change what is already there and what has been in existence there for many, many years. If these variances are not granted, the only alternative is to tear down the building and relocate it, and this would create practical difficulty and unreasonable hardship. The variance to permit the driveway and parking areas to be surfaced with crusher run in lieu of the required paving fall into the same general category. The crusher run has been in existence for many, many years, and not only provides a usable surface but provides at least some infiltration over and above that that would be provided by an impervious surface. Since it is crusher run and since the

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Board is of the opinion that this variance should be granted, it is unreasonable to require the crusher run be striped. The variance to permit parking 0 feet from the street right-of-way in lieu of the required 10 feet is also "fairly accomplished." It is there now and has always been there, and it would be arbitrary on the Board's part to deny its continued use.

#### ORDER

It is therefore this 11th day of May, 1990 by the County Board of Appeals of Baltimore County ORDERED that the Petition to reclassify the property from D.R. 16 to B.R. be and the same is GRANTED;

IT IS FURTHER ORDERED that the special exception to permit the property to be used as a contractor's storage yard under the B.R. zoning regulations be and the same is GRANTED;

IT IS FURTHER ORDERED that the area variances petitioned for to permit a front yard setback of 3 feet in lieu of the required 25 feet, to permit a side yard setback of 17 feet in lieu of the required 30 feet, a rear yard setback of 1.5 feet in lieu of the required 30 feet be and the same are GRANTED;

IT IS FURTHER ORDERED that the variance to permit storage of vehicles, materials and equipment within 3 feet of the front property line in lieu of the required 10 feet be and the same is GRANTED; that the variance to allow the parking and driveways to be surfaced with crusher run in lieu of the required paving and to permit this crusher run not to be striped be and the same is GRANTED; and that the variance to permit parking 0 feet from the street right-of-way in lieu of the required 10 feet be and the same is GRANTED.

The above grantings are subject to the following restrictions:

1. The fence along the north side of the property should be replaced as approved by the Director of the Office of Planning & Zoning.

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2. All outside repair work on equipment shall take place only between 8:00 a.m. and 6:30 p.m.
3. All lighting fixtures used to illuminate the area shall be used to reflect light away from residential lots and public streets.
4. A landscape plan shall be submitted to the Baltimore County Landscape Planner to approve prior to CRG approval.
5. Only repairable, usable equipment shall be stored at this site. This is intended to preclude the Petitioner's storage of any junk or trash or discarded parts on this site.

Any appeal from this decision must be made in accordance

with Rules B-1 through B-13 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS  
OF BALTIMORE COUNTY

William T. Hackett  
William T. Hackett, Chairman

Michael B. Sawyer  
Michael B. Sawyer

Harry E. Buchheister, Jr.  
Harry E. Buchheister, Jr.

### PETITION FOR ZONING RE-CLASSIFICATION SPECIAL EXCEPTION AND/OR VARIANCE

TO THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition (1) that the zoning status of the herein described property be re-classified, pursuant to the Zoning Law of Baltimore County, from an D.R. 16 zone to an B.R. zone, for the reasons given in the attached statement; and (2) for a Special Exception, under the said Zoning Law and Zoning Regulations of Baltimore County, to use the herein described property, for Contractor Equipment Storage Yard

and (3) for the reasons given in the attached statement, a variance from the following sections of the Zoning Law and Zoning Regulations of Baltimore County:

See Attached

MAP  
MECH  
4B  
E.D. 15A  
DATE 4-14-91  
200 BK  
1000 BK  
DP 6

COUNTY BOARD OF APPEALS  
69 AUG 31 PM 4:25

Property is to be posted and advertised as prescribed by The Baltimore County Code.

I, or we, agree to pay expenses of above Re-classification, Special Exception and/or Variance, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

Contract Purchaser:

Legal Owner(s):

(Type or Print Name)

George J. Guttenberger

Signature

George J. Guttenberger

Address

Constance H. Guttenberger

City and State

Towson, MD

Attorney for Petitioner:

318 N. Maryland Ave

(Type or Print Name)

S. Eric DiNenna, Esquire

Signature

S. Eric DiNenna, Esquire

Address

P.O. Box 10508

City and State

Towson, MD

Attorney's Telephone No.:

21285-0508

City and State

Towson, MD

Attorney's Telephone No.:

296-6820

City and State

Towson, MD

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City and State

Towson, MD

#### ATTACHMENT

1. Section 238.1, 238.2, 238.3, and 238.4 of the Zoning Regulations to permit a front yard setback of 3 feet in lieu of the required 25', a variance of 22'; a side yard setback of 17' in lieu of required 30', a variance of 13'; and a rear yard setback of 1.5' in lieu of required 30', a variance of 28.5'.
2. Section 409.8A.2 of the Zoning Regulation to allow the driveway and parking areas not to be paved or macadamized but to crusher run surface.
3. Section 409.8A.6 of the Zoning Regulation painting parking area strips.
4. Section 409.8A.4 of the Zoning Regulation to permit a 0' setback for parking space from existing road R/W in lieu of required 10', a Variance of 10'.

#### CERTIFICATE OF PUBLICATION

TOWSON, MD., March 30, 1990

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper published in Towson, Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on March 29, 1990

THE JEFFERSONIAN,

S. Zeta Olson  
Publisher

PO 103649  
reg 138199

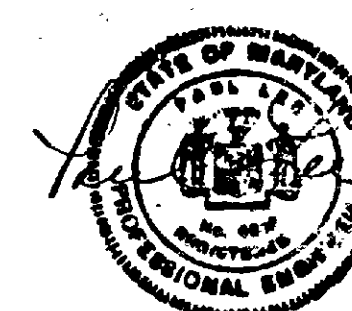
Paul Lee P.E.

Paul Lee Engineering Inc.  
505 W. Pennsylvania Ave.  
Towson, Maryland 21206  
301-821-5341

#### DESCRIPTION

1422 OLD EASTERN AVENUE  
FIFTEENTH ELECTION DISTRICT  
BALTIMORE COUNTY, MARYLAND

Beginning for the same at a point located on the north side of Old Eastern Avenue at the intersection with the west side of Ann Avenue, said point also being located Northerly 40 feet ± from the center of Old Eastern Avenue; thence binding on the west side of Ann Avenue (1) N 12°57'40" W 154.48 feet, thence leaving said west side of Ann Avenue, (2) S 73°02'20" W 78.40 feet to the east right of way line of Maryland Route 702 Extended, thence binding on the east side of Maryland Route 702 Extended, thence the following courses and distances: (3) S 28°28'20" E 129.00 feet, and (4) S 17°31'40" E 42.50 feet to the north side of Old Eastern Avenue; thence binding on the north side of Old Eastern Avenue, (5) N 73°02'28" E 21.60 feet to the point of beginning. Containing 0.21 acres of land, more or less.



Engineers — Surveyors — Site Planners 8/29/83







RECEIVED  
COUNTY BOARD OF APPEALS  
90 APR 13 AM 11:48



Item 9, Cycle II

From the Office of  
PAUL LEE ENGINEERING, INC.  
304 W. PENNSYLVANIA AVENUE  
TOWSON, MARYLAND 21204

ENVIRONMENTAL IMPACT STATEMENT  
SERVICE GARAGE AND STORAGE YARD  
1422 OLD EASTERN AVENUE  
BALTIMORE COUNTY, MARYLAND



MICROFILMED

1. Net area of site -- 0.21 Ac.±
2. Existing coverage
  - a. Buildings -- .046 Ac.±
  - b. Drives and parking areas and walks -- .132 Ac.±
  - c. Vegetative cover -- 0.032 Ac.±
  - d. Impervious Area -- 85%
3. Proposed coverage
  - a. Buildings -- 0.072 Ac.±
  - b. Drives and parking areas -- 0.090 Ac.±
  - c. Vegetative cover 0.048 Ac.±
  - d. Impervious Area -- 77%
4. The soil at this site is loamy and clayey land (LyB) 0 to 5 per cent slopes. The hazard of further erosion due to building and parking areas is severe. Soil erosion should be mitigated by using extraordinary sediment control measures such as double silt fences and prompt stabilization of disturbed areas.

This site lies in an already developed area and drains directly to existing street curb and gutter and existing storm drain systems. Further, the proposed impervious area is less than the existing which would tend to lessen the impact of surface water on the existing storm drain systems.

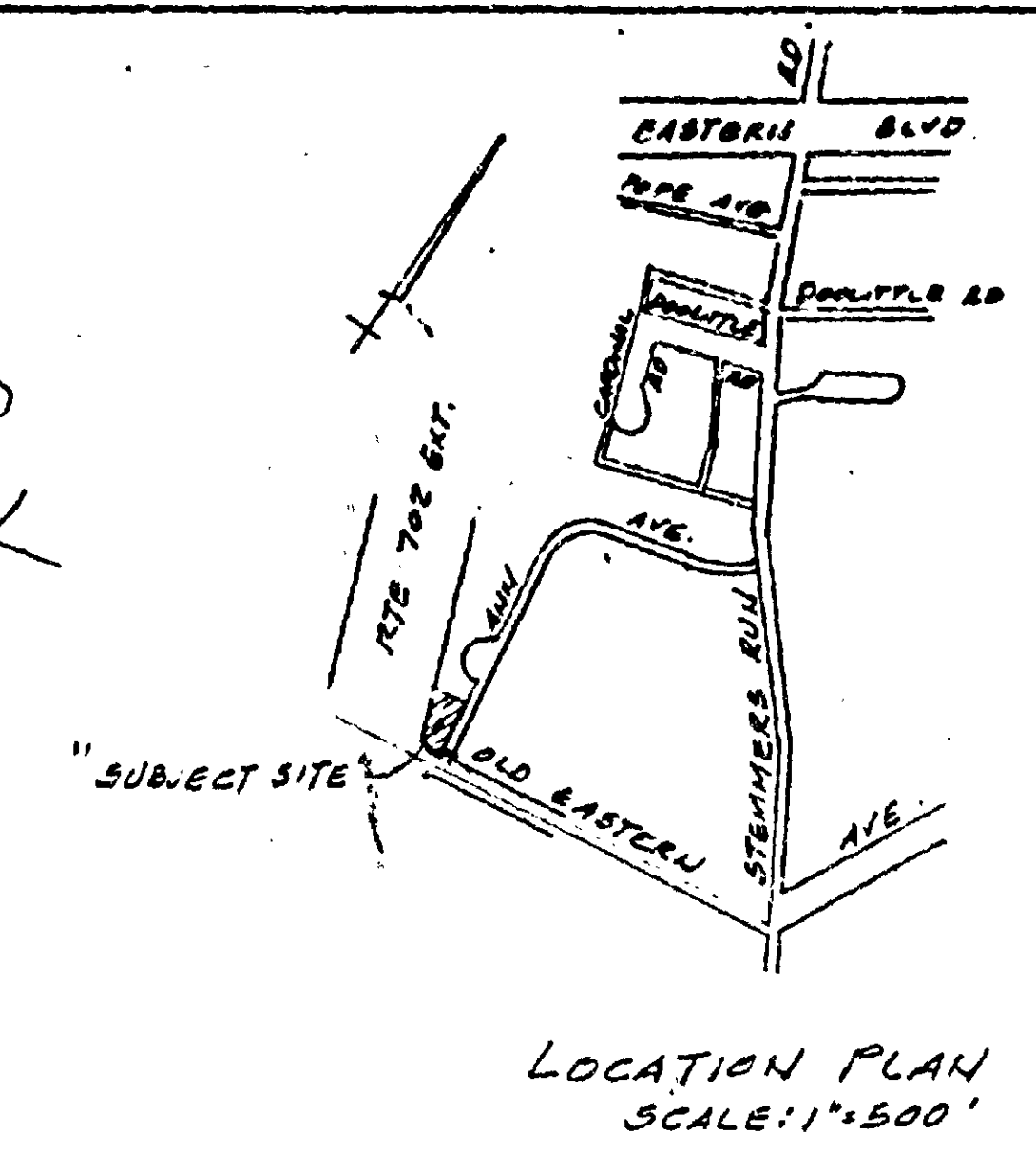
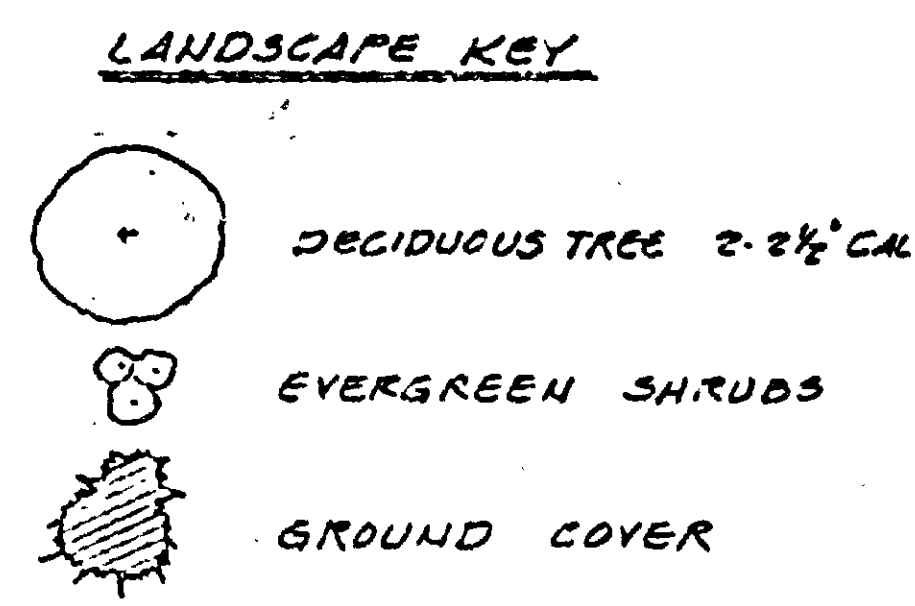
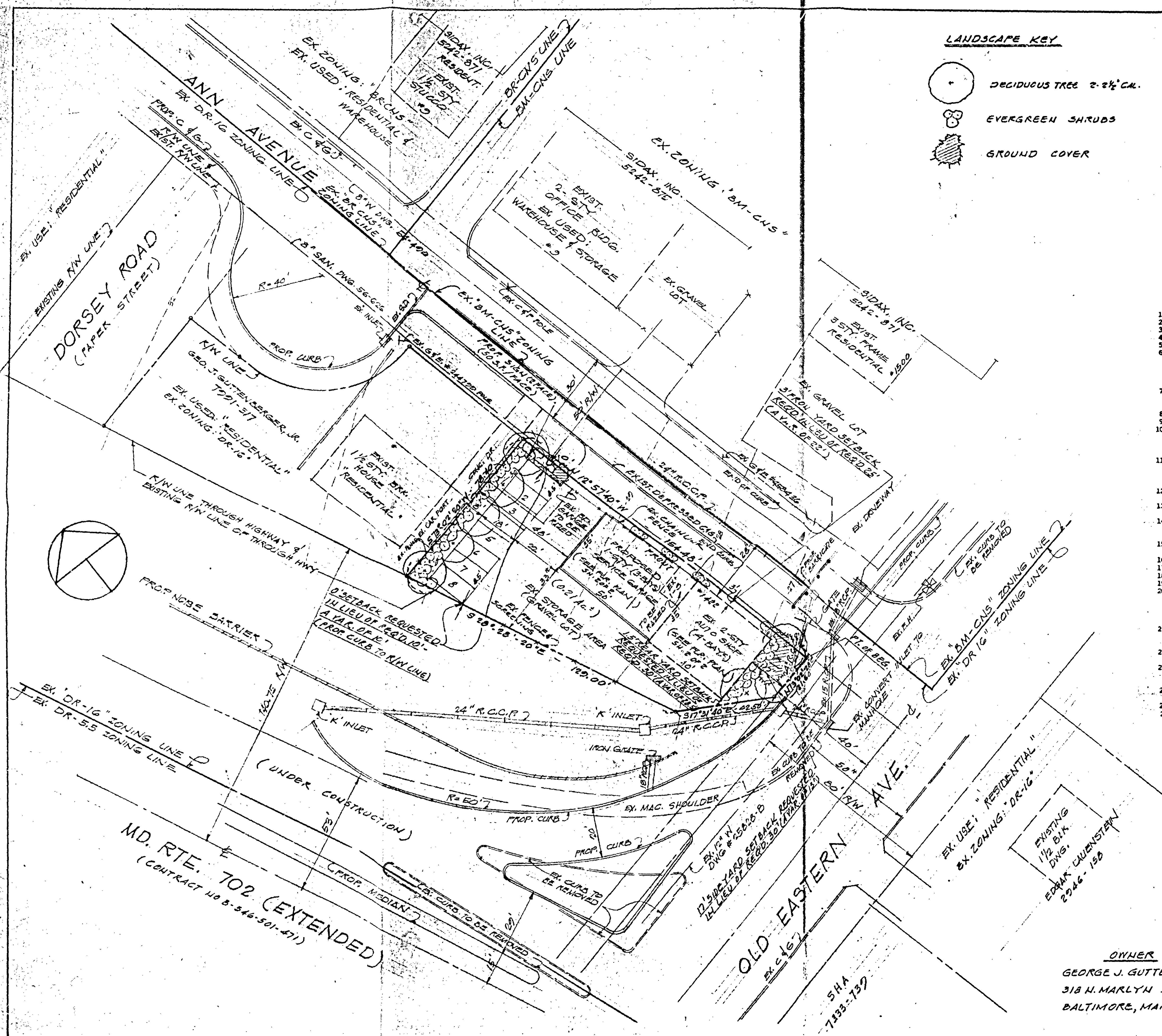
To help in achieving water quality, the incorporation of Best Management Practices such as planting of vegetation as soon as possible after final grading, cleaning dirt and debris accumulating on private roads and parking lots as follows (May through October, concurrent with grass mowing; November through April, monthly), snow removal by mechanical means except in severe snow or ice conditions, when deicing compounds can be used, application of (fertilizer, herbicides and pesticides) as recommended by the University of Maryland Cooperative Extension Service and the use of grass lined swales will provide protection for the receiving waters ecosystem.

No adverse effects can be seen as having any long range significance if the recommendations contained herein are followed. The application of the Best Management Practices should be cost effective in that they can be incurred during normal site maintenance operations.

Short term effects are more significant in that noise levels from construction equipment such as bulldozers (76 to 96 dB @ 50 feet), trenchers (72 to 93 dB @ 50 feet) etc. are used during normal construction activities. Permissible workplace noise exposures per OSHA ranges at (8 hour duration @ 90 dB) to progressively shorter periods such as (6 hours @ 92 dB), (4 hours @ 95), (3 hours @ 97), and (2 hours @ 100) to the impact level of 140 dB. To reduce impact, all equipment should be maintained to the manufacturers specifications including mufflers or other noise reducing devices. The only sound emanations from the proposed development contributing to the noise in the vicinity would be from the additional traffic generated. Light auto traffic noise is approximately 50 to 55 decibels. The anticipated traffic generated by the proposed use is approximated at less than 100 trips per day, which will produce minimal noise levels.

Site grading creates sediment problems that can be reduced by implementing a sediment control plan which is reviewed and inspected by Baltimore County and Soil Conservation Service. Dust can be controlled by such methods as wetting and the Division of Air Pollution Control should be contacted for guidance. Asbestos may be encountered in older buildings. Prior to construction of additions to the existing structure the Baltimore County Health Department Environmental Service Department should be contacted to inspect the existing building and provide guidelines for its disposal if encountered.

It is our opinion that the environmental impact will be negligible if the above mentioned Best Management Practices are used during the construction of the proposed expansion and maintenance of the facilities.



- GENERAL NOTES**
- Area of Property - 0.21 Ac. (9,148 S.F.) Gross Area - 0.43 Ac.
  - Existing Zoning of Property - DR-16
  - Existing Use of Property - Office and Service Garage and storage yard
  - Proposed Zoning of Property - "BR"
  - Proposed Use of Property - Office and Service Garage and Storage Yard
  - Required Offstreet Parking
  - Existing Building - 1st Floor Service Garage 1400 x 3.3/1000 = 4.61  
2nd Floor Office 1400 x 3.3/1000 = 4.61  
Proposed Addition - 1 Story 1700 x 3.3/1000 = 5.77  
Total 15.00 Parking Spaces
  - Building Coverage Permitted - 2 x 9148 = 18,296 s.f.  
Existing Building Coverage - 1,400/9,148 = 15.3%  
Existing Building Coverage + Addition - 3,150/9,148 = 34.4%
  - Number of Parking Spaces Shown = 15 (inc. 7 bay)
  - Number of Employees - 10
  - Hours of Operation:  
Mon.-Fri. - 6 A.M. - 10 P.M.  
Sat. - 6 A.M. - 5 P.M.  
Sun. - On Call
  - Landscape Requirements:  
8 parking Spaces / 12 = 1 Tree  
Road Frontage: 176' / 40 = 5 Trees  
Screen Residence - Total Req'd. 6 Trees
  - Soil Borings will be conducted prior to construction to enable mitigative measures to be taken if adverse soil conditions are encountered
  - No anticipated emissions are expected to be encountered resulting from odors, gases, light, or heat
  - Existing grade shown hereon are derived from Baltimore County Topo Sheet not current field run topo. Some degree of change may be encountered but no major problem is anticipated.
  - Lighting shall be so directed as not to reflect toward residences or interfere with traffic.
  - Signs - As permitted Sec. 413 of the Zoning Regulations
  - Storm Water Management Waiver to be requested
  - Property served by public sewer and water
  - Petitioner requesting reclassification of property from DR 16 to BR
  - Petitioner requesting a Variance to Sec. 238.1, 238.2, 238.3, and 238.4 of the Zoning Regulations to permit a front yard setback of 3' in lieu of the required 25', a variance of 22'; a side yard setback of 17' in lieu of required 30', a variance of 13'; and a rear yard setback of 1.5' in lieu of required 30', a variance of 28.5'
  - Petitioner requesting a Variance to Sec. 409.8A.2 of the Zoning Regulation to allow the driveway and parking areas not to be paved or macadamized but to crush-run surface
  - Petitioner requesting a Variance to Sec. 409.8A.6 of the Zoning Regulation painting parking area stripes
  - Petitioner requesting a Variance to Sec. 409.8A.4 of the Zoning Regulation to permit a 0' setback for parking space from existing road R/W in lieu of required 10', a Variance of 10'
  - Petitioner requesting a Special Exception for contractor's equipment storage area on site.
  - Any damaged vehicles will be stored inside the building overnight.
  - All contractor's equipment, vehicles, and materials are not to be placed any closer than 3' from the front property line.

SHEET 1 OF 2

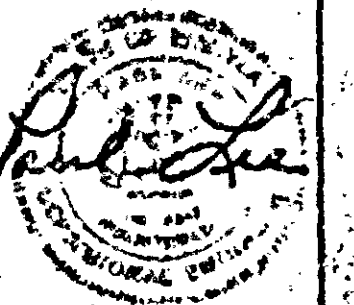
PLAT TO ACCOMPANY PETITION FOR  
RECLASSIFICATION, VARIANCES  
AND SPECIAL EXCEPTION  
"1422 OLD EASTERN AVENUE

15<sup>TH</sup> ELECT. DIST. - 3<sup>RD</sup> COUNCIL MAND. DIST. BALTIMORE COUNTY, MD.

SCALE: 1"=20' AUGUST 23, 1989

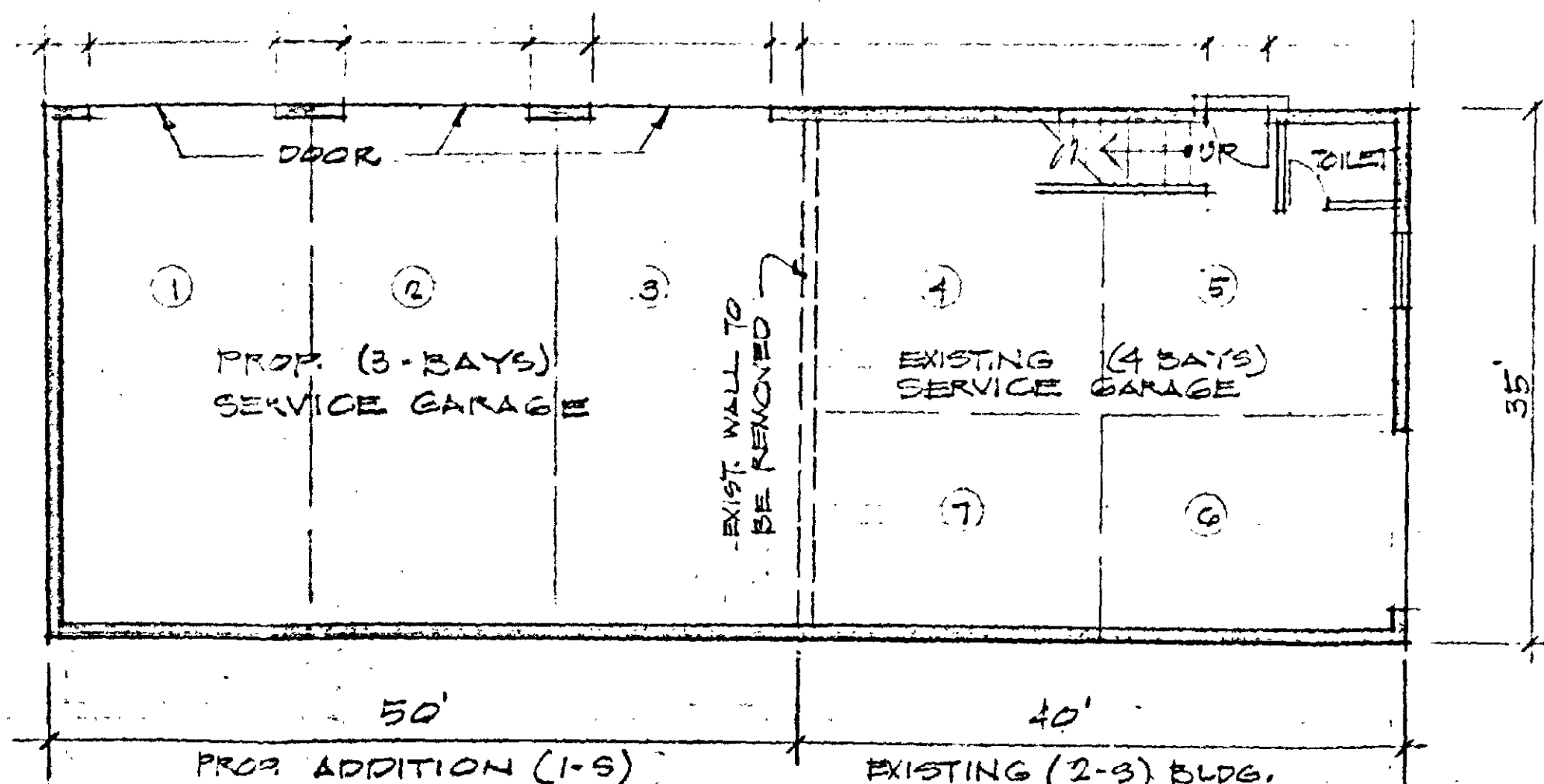
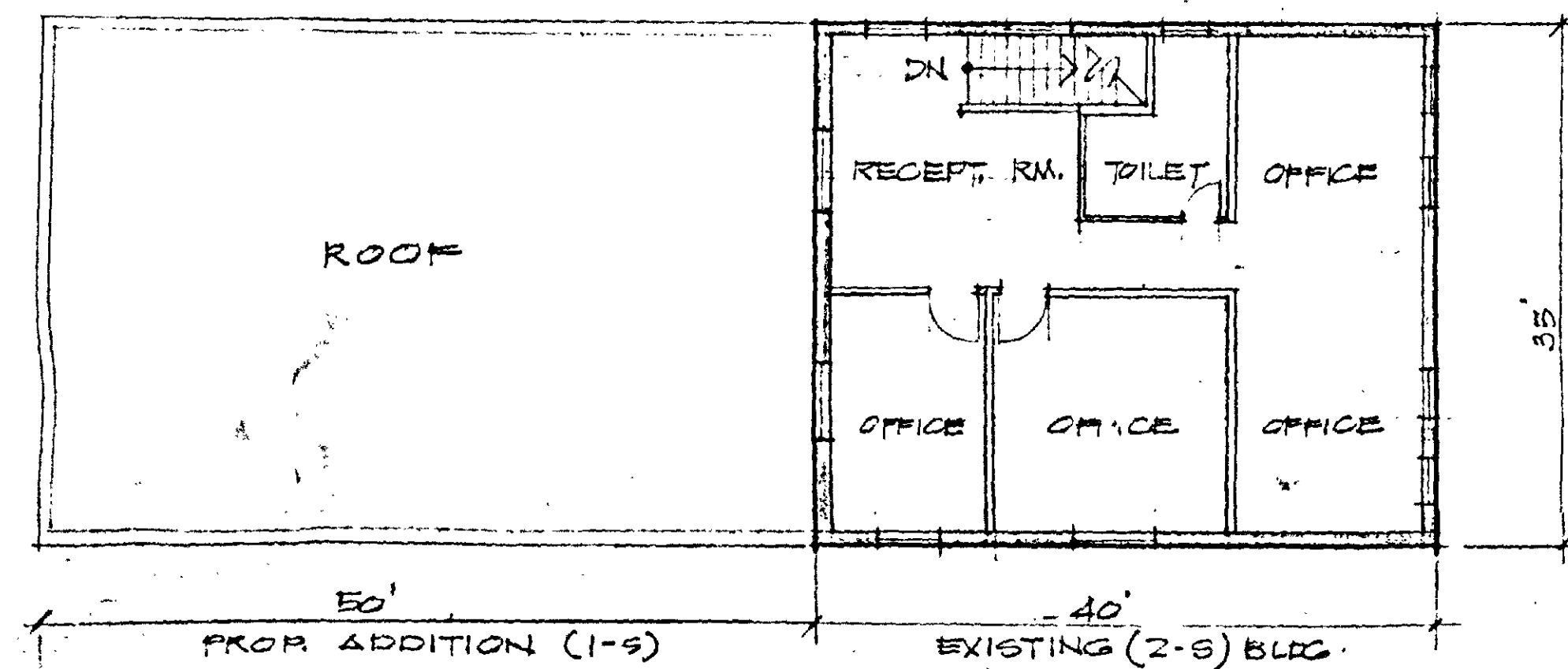
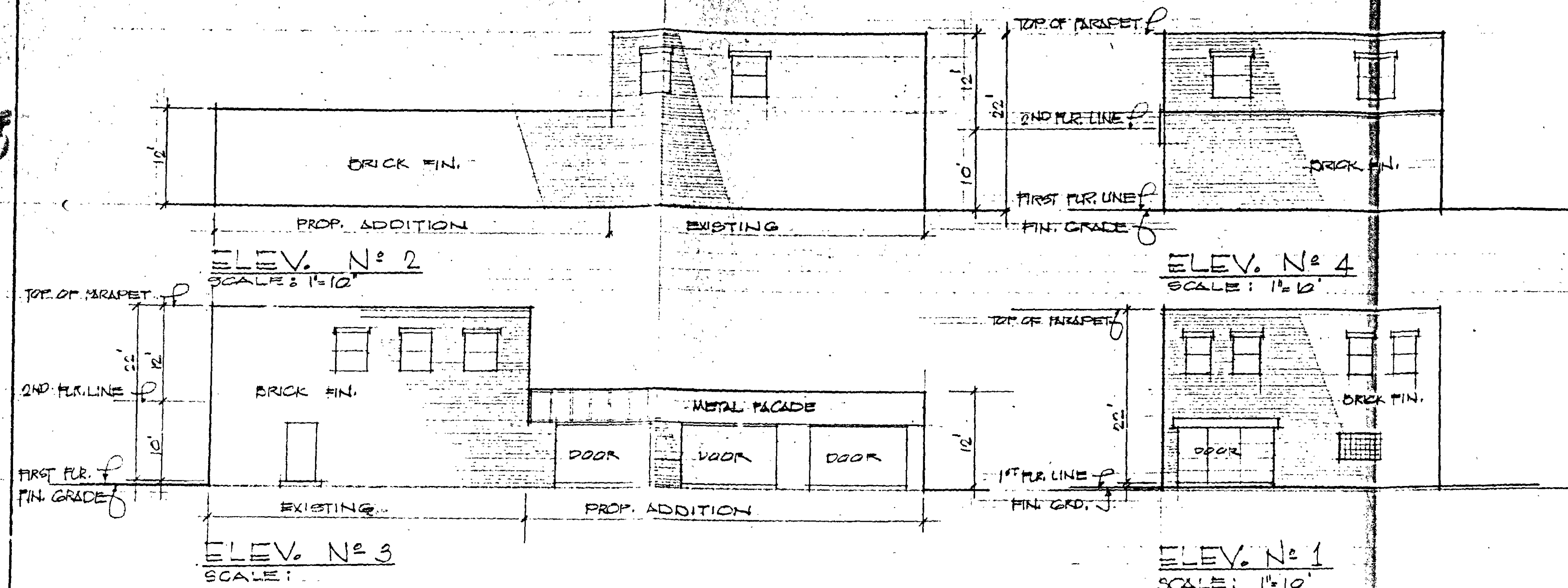
**OWNER**  
GEORGE J. GUTTENBERGER, JR.  
318 N. MARLYN AVENUE  
BALTIMORE, MARYLAND 21221

**ENGINEER**  
PAUL LEE ENGINEERING, INC.  
304 W. PENNSYLVANIA AVE.  
TOWSON, MARYLAND 21204



Petition #1 89-012





SHEET 2 OF 2

PLAT TO ACCOMPANY PETITION FOR  
RECLASSIFICATION, VARIANCES  
AND SPECIAL EXCEPTION

\* 1422 OLD EASTERN AVENUE

15TH ELECT. DIST. - 5TH COUNCILMANIC DIST. BALTIMORE COUNTY, MD.

SCALE: AS SHOWN

AUG. 23, 1989

OWNER  
GEORGE J. GUTTENBERGER, JR.  
318 N. MARLYN AVENUE  
BALTIMORE, MARYLAND 21221

ENGINEER  
PAUL LEE ENGINEERING, INC.  
304 W. PENNSYLVANIA AVE.  
TONSON, MARYLAND 21204

*Paul Lee*